



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/743,118

12/22/2003

Fred Wehling

208-015US1

7497

27791

7590

12/22/2006

ALLISON JOHNSON, P.A.

LAKE CALHOUN EXECUTIVE CENTER

3033 EXCELSIOR BLVD., SUITE 467

MINNEAPOLIS, MN 55416

EXAMINER

SAMALA, JAGADISHWAR RAO

ART UNIT

PAPER NUMBER

1618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
--	-----------	---------------

3 MONTHS

12/22/2006

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/743,118	Applicant(s) WEHLING ET AL.	
	Examiner Jagadishwar R. Samala	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 5-36 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-36 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/22/03&11/21/06</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION
Status of Application

Receipt of the response to Rejection requirement and Applicant's arguments/remarks filed on 11/21/2006 is acknowledged.

Claims 1,3 and 5-36 are pending, claims 2 and 4 are cancelled and claims 1,3 and 5-36 are examined. Claims 1,3 and 5-36 are rejected.

Response to Applicant's Argument.

Murpani et al. (US 2003/0161875) is withdrawn in view of applicant's amendment.

Needleman et al. (US 5,993,854) is withdrawn in view of applicant's amendment.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,3,and 5-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gioffre et al. (US 4,627,972 here after '972) in view Schobel et al. (US 4,687,662 here after '662) or Rockliffe et al (US 4,471,871 here after '871) or Howard P. Andersen (US 3,629,468 here after '468).

Claims 1,3,and 5-36 are drawn to an effervescent composition comprising menthol, eucalyptus oil and an acid and a base as an effervescent agent wherein claims

Art Unit: 1618

(27-27) are drawn to a package kit, (29-31) are drawn to mouthwash, and (32-36) are drawn to method of forming an aqueous effervescent composition.

The '972 patent discloses an effervescent composition comprising menthol, eucalyptus oil and anhydrous base medium and a gas containing inorganic oxide material as an effervescent agent. Preferably flavor and sweetening agent together comprise from about 0.1 to 10% or more of the effervescent compositions (see column 4, lines 22-56). The patent '972 also discloses various other compatible and suitable materials incorporated in the chewable effervescent tablets, wherein solids and liquids are proportioned similarly to the amounts desirable and the flavor is blended with the solids and liquids, and a waxy matrix such as polyethylene glycol, coloring or whitening agents, sweetening agents such as sorbitol, an acid/base reaction couple as an additional in situ source of a gas is desired, in an amounts which do not substantially adversely affect the properties and characteristics desired and are selected and used in proper amount depending upon the particular type of effervescent composition required (see column 8. lines 21-36).

The '662 patent discloses a effervescent composition in the form of tablets or powders comprising a therapeutic agent, a granulating agent, a microparticulate effervescent component and an effervescent system which dissolve rapidly in water to yield an effervescent solution. (see abstract). The '662 patent further teaches that the dissolution of the tablet occurs at 22°C temperature of water (see column 10, lines 63-64).

It is noted that recitation/limitation of instant claim 1 (tablet dissolves in water having a temperature of at least 38°C to form a clear solution) is an inherent feature and as long as all critical elements (structure and composition) as required by instant claims are taught by the cited reference and thus the claims are anticipated.

Regarding the claims 27-29, Rockliffe et al., (US 4,471,871) discloses a method of packaging of tablets in a sealed pouch or packet adapted to be torn open when required for use (see abstract). The '871 patent further discloses a safe device of packaging kit for tablet, in such a manner that the tablets are contained within an airtight sealed container which is impervious to the ingress of moisture (see column 6, lines 1-3). This disclosures render the claims anticipated.

Regarding claims 35 and 36, it is the position of the examiner that the temperature of the water is not critical or obvious, when '972 is taken into consideration in view of '468. The prior art provides a method, where an effervescent tablet when dissolved in water produces a solution, which makes it uniquely desirable for use as a mouthwash (Howard P. Andersen, U.S. 3,629,468 see column 1 lines 24-33). Indeed the resulting effervescent mouthwash solution will have the dual role of producing an astringent mouthwash effect and desensitizing action, and which form will lend for long lasting plaque control, decay control, anti-microbial action, breath sweetening whitening and thereof. Therefore, when these references are taken together, water temperature is obvious because of the prior art teaching of dissolution of effervescent tablet to provide a clear solution, which makes it uniquely desirable for use as mouthwash.

Art Unit: 1618

Although there is no example contemplated in the patent using a mixture of all the said active agents, it is apparent to one of ordinary skill in the art to make such modification to include these beneficial active agents to maximize effervescent composition effectiveness because making such modification can enhance industrial applicability.

Each critical element required by the instant claims is taught by cited reference and minor variations such as amounts of active ingredients and carriers, route of application, mixing and adjusting process in order to determine most effective outcome (results) is considered to be well within the skilled level of the artisan.

One would have been motivated to do so, with reasonable expectation of success because it is always desirable to have extended effervescent composition modalities to improve customer's compliance by enhancing customer satisfaction and increasing the selection option. The techniques and skills required for making such substitution is conventional knowledge or well within the skills of ordinary artisan and thus obvious, absent evidence to the contrary. Further given the general teaching of dissolution of effervescent tablet to provide a clear solution, which makes it uniquely desirable for use as mouthwash as disclosed by Howard P. Andersen, one of ordinary skill in the art would have been motivated to employ improved tablet composition comprising effervescent agent as disclosed by Schobel because the use of improved effervescent mouthwash tablets is common in the art of mouthwash solutions to provide a desired effervescent tablet with mouthwash applications as shown by Andersen.

Thus, the claimed subject matter is well within the scope of the patented invention, which renders the claims not patentably distinct over the prior art of the record.

Conclusion

1. At present no claims are allowed
2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagadishwar R. Samala whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

Art Unit: 1618

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VICKIE KIM
PRIMARY EXAMINER

Jagadishwar R Samala
Examiner
Art Unit 1618
